

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL HAYES,

Plaintiff,

-against-

BRADY CONDLIN; STEVEN SCHMOKE;
THE DUTCHESS COUNTY DISTRICT
ATTORNEY'S OFFICE; THE STATE OF
NEW YORK,

Defendants.

24-CV-7912 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action, under 42 U.S.C. §§ 1983 and 1988, alleging that Defendants violated his federal constitutional rights. The Court dismisses the complaint for the following reasons.

Plaintiff has previously filed an action in this court arising from the same events. *See Hayes v. Condlin*, No. 22-CV-7295 (KMK). By order dated February 26, 2024, Judge Kenneth M. Karas granted in part and denied in part Defendants' motion to dismiss, and granted Plaintiff 30 days' leave to file an amended complaint. ECF 7:22-CV-7295, 18. Plaintiff did not file an amended complaint, and on May 5, 2024, Judge Karas directed Plaintiff to show cause why the action should not be dismissed for failure to prosecute. ECF 7:22-CV-7295, 22. Because Plaintiff did not respond to the court's order, by order dated June 17, 2024, Judge Karas dismissed the case without prejudice for failure to prosecute. ECF 7:22-CV-7295, 23. On July 8, 2024, Plaintiff filed a "Putative Amended Complaint" in that action, along with a letter seeking leave to file the putative amended complaint. ECF 7:22-CV-7295, 16. The "Putative Amended Complaint" filed in No. 22-CV-7295 (KMK) is identical to the complaint filed in this action, No. 24-CV-7912 (LTS). By orders dated October 28, 2024, and October 31, 2024, Judge Karas directed the Clerk

of Court to reopen case No. 22-CV-7295 (KMK) and to accept Plaintiff's "Putative Amended Complaint" for filing, and directed Defendants to respond to that submission. ECF 7:22-CV-7295, 25, 26.

As the complaint filed in this case, No. 24-CV-7912 (LTS) is identical to the amended complaint filed in No. 22-CV-7295 (KMK), no useful purpose would be served by litigating this duplicate action. Therefore, this complaint is dismissed without prejudice to Plaintiff's pending case under docket number No. 22-CV-7295 (KMK).

CONCLUSION

Plaintiff's complaint is dismissed as duplicative of No. 22-CV-7295 (KMK).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Court directs the Clerk of Court to enter judgment in this action.

SO ORDERED.

Dated: November 1, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge